

1 STEPHEN H. TURNER, SB# 89627
E-Mail: turner@lbbslaw.com
2 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
221 North Figueroa Street, Suite 1200
3 Los Angeles, California 90012
Telephone: (213) 250-1800
4 Facsimile: (213) 250-7900
ROGER S. RAPHAEL, SB #111946
5 E-Mail: raphael@lbbslaw.com
LEWIS BRISBOIS BISGAARD & SMITH LLP
6 One Sansome Street, Suite 1400
San Francisco, California 94104
7 Telephone: (415) 362-2580
Facsimile: (415) 434-0882
8

9 Attorneys for Defendants Patenaude & Felix, APC

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12

13 EMELIA M. PASTERNAK,
14 Plaintiff,
15

16 v.

17 TRANS UNION, LLC, EXPERIAN
INFORMATION SOLUTIONS, INC.,
EQUIFAX INFORMATION
18 SERVICES, LLC, CAPITAL ONE
BANK, a national association, and
19 PATENAUDE & FELIX, APC, a law
firm,
20

21 Defendants.
22

CASE NO. 3:07-cv-04980 MJJ

The Hon. Martin J. Jenkins

23 **ANSWER OF PATENAUDE &
FELIX, APC TO FIRST AMENDED
COMPLAINT**

ACTION FILED: September 26,
2007

TRIAL DATE: N/A

24 DEFENDANT PATENAUDE & FELIX, APC. ("Defendant"), for itself and
for no other defendant, answers the First Amended Complaint as follows:

25 1. Answering paragraph No. 1, Defendant has insufficient information and
26 belief on which to admit or deny the allegations contained herein and on that basis
27 denies each and every allegation.

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1 2. Answering paragraph No. 2, Defendant has insufficient information and
2 belief on which to admit or deny the allegations contained herein and on that basis
3 denies each and every allegation.

4 3. Answering paragraph No. 3, Defendant has insufficient information and
5 belief on which to admit or deny the allegations contained herein and on that basis
6 denies each and every allegation.

7 4. Answering paragraph No. 4, Defendant has insufficient information and
8 belief on which to admit or deny the allegations contained herein and on that basis
9 denies each and every allegation.

10 5. Answering paragraph No. 5, Defendant denies that it violated the Fair
11 Debt Collection Practices Act.

12 6. Answering paragraph No. 6, Defendant denies it violated California's
13 Anti Theft Statute. Defendant lacks sufficient information and belief on which to
14 either admit or deny each and every allegation in paragraph 6.

15 7. Answering paragraph No. 7, Defendant denies it is liable for malicious
16 prosecution, or for any other basis. Plaintiff lacks sufficient information and belief
17 on which to admit or deny any other allegation in paragraph 7.

18 8. Answering paragraph No. 8, Defendant has insufficient information and
19 belief on which to admit or deny the allegations contained herein and on that basis
20 denies each and every allegation.

21 9. Answering paragraph No. 9, Defendant has insufficient information and
22 belief on which to admit or deny the allegations contained herein and on that basis
23 denies each and every allegation.

24 10. Answering paragraph No. 10, Defendant has insufficient information
25 and belief on which to admit or deny the allegations contained herein and on that
26 basis denies each and every allegation.

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1 11. Answering paragraph No. 11, Defendant has insufficient information
2 and belief on which to admit or deny the allegations contained herein and on that
3 basis denies each and every allegation.

4 12. Answering paragraph No. 12, Defendant has insufficient information
5 and belief in which to admit or deny the allegations contained herein and on that
6 basis denies each and every allegation.

7 13. Answering paragraph No. 13, Defendant has insufficient information
8 and belief in which to admit or deny the allegations contained herein and on that
9 basis denies each and every allegation.

10 14. Answering paragraph No. 14, Defendant admits that it has an office in
11 San Diego.

12 15. Answering paragraph No. 15, Defendant incorporates paragraphs 1-14
13 of this answer as if set forth at length.

14 16. Answering paragraph No. 16, Defendant notes that the first claim for
15 relief is not directed to it.

16 17. Answering paragraph No. 17, Defendant notes that the first claim for
17 relief is not directed to it.

18 18. Answering paragraph No. 18, Defendant notes that the first claim for
19 relief is not directed to it.

20 19. Answering paragraph No. 19, Defendant notes that the first claim for
21 relief is not directed to it.

22 20. Answering paragraph No. 20, Defendant notes that the first claim for
23 relief is not directed to it.

24 21. Answering paragraph No. 21, Defendant notes that the first claim for
25 relief is not directed to it.

26 22. Answering paragraph No. 22, Defendant notes that the first claim for
27 relief is not directed to it.

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1 23. Answering paragraph No. 23, Defendant notes that the first claim for
2 relief is not directed to it.

3 24. Answering paragraph No. 24, Defendant notes that the first claim for
4 relief is not directed to it.

5 25. Answering paragraph No. 25, Defendant notes that the first claim for
6 relief is not directed to it.

7 26. Answering paragraph No. 26, Defendant notes that the first claim for
8 relief is not directed to it.

9 27. Answering paragraph No. 27, Defendant notes that the first claim for
10 relief is not directed to it.

11 28. Answering paragraph No. 28, Defendant incorporates paragraphs 1
12 through 14 of this answer as if set forth at length.

13 29. Answering paragraph No. 29, Defendant notes that the second claim for
14 relief is not directed to it.

15 30. Answering paragraph No. 30, Defendant notes that the second claim for
16 relief is not directed to it.

17 31. Answering paragraph No. 31, Defendant notes that the second claim for
18 relief is not directed to it.

19 32. Answering paragraph No. 32, Defendant notes that the second claim for
20 relief is not directed to it.

21 33. Answering paragraph No. 33, Defendant notes that the second claim for
22 relief is not directed to it.

23 34. Answering paragraph No. 34, Defendant notes that the second claim for
24 relief is not directed to it.

25 35. Answering paragraph No. 35, Defendant notes that the second claim for
26 relief is not directed to it.

27 36. Answering paragraph No. 36, Defendant notes that the second claim for
28 relief is not directed to it.

1 37. Answering paragraph No. 37, Defendant notes that the second claim for
2 relief is not directed to it.

3 38. Answering paragraph No. 38, Defendant incorporates paragraphs 1-14
4 of this answer as if set forth at length.

5 39. Answering paragraph No. 39, Defendant notes that the third claim for
6 relief is not directed to it.

7 40. Answering paragraph No. 40, Defendant notes that the third claim for
8 relief is not directed to it.

9 41. Answering paragraph No. 41, Defendant notes that the third claim for
10 relief is not directed to it.

11 42. Answering paragraph No. 42, Defendant notes that the third claim for
12 relief is not directed to it.

13 43. Answering paragraph No. 43, Defendant notes that the third claim for
14 relief is not directed to it.

15 44. Answering paragraph No. 44, Defendant notes that the third claim for
16 relief is not directed to it.

17 45. Answering paragraph No. 45, Defendant notes that the third claim for
18 relief is not directed to it.

19 46. Answering paragraph No. 46, Defendant notes that the third claim for
20 relief is not directed to it.

21 47. Answering paragraph No. 47, Defendant notes that the third claim for
22 relief is not directed to it.

23 48. Answering paragraph No. 48, Defendant incorporates paragraphs 1
24 through 14 of this answer as if set forth at length.

25 49. Answering paragraph No. 49, Defendant admits that it is a law firm
26 which has an office in San Diego. Defendant admits each and every other allegation.

27 50. Answering paragraph No. 50, Defendant admits each and every
28 allegation.

1 51. Answering paragraph No. 51, Defendant lacks sufficient information
2 and belief in which to either admit or deny the allegations contained therein and on
3 that basis denies each and every allegation.

4 52. Answering paragraph No. 52, Defendant lacks sufficient information
5 and belief in which to either admit or deny the allegations contained therein and on
6 that basis denies each and every allegation.

7 53. Answering paragraph No. 53 and each subparagraph therein, Defendant
8 denies each and every allegation.

9 54. Answering paragraph No. 54, Defendant has insufficient information
10 and belief on which to admit or deny the allegations contained herein and on that
11 basis denies each and every allegation.

12 55. Answering paragraph No. 55, Defendant denies each and every
13 allegation contained therein and further denies that it is liable in any way to Plaintiff.

14 56. Answering paragraph No. 56, Defendant has insufficient information
15 and belief on which to admit or deny the allegations contained herein and on that
16 basis denies each and every allegation.

17 57. Answering paragraph No. 57, Defendant has insufficient information
18 and belief on which to admit or deny the allegations contained herein and on that
19 basis denies each and every allegation.

20 58. Answering paragraph No. 58, Defendant has insufficient information
21 and belief in which to admit or deny the allegations contained herein and on that
22 basis denies each and every allegation.

23 59. Answering paragraph No. 59, Defendant has insufficient information
24 and belief in which to admit or deny the allegations contained herein and on that
25 basis denies each and every allegation.

26 60. Answering paragraph No. 60, Defendant has insufficient information
27 and belief in which to admit or deny the allegations contained herein and on that
28 basis denies each and every allegation.

1 61. Answering paragraph No. 61, Defendant denies that it received a copy
2 of a police report from plaintiff. As to the remaining allegations in the complaint,
3 defendant has has insufficient information and belief on which to admit or deny the
4 allegations contained herein and on that basis denies each and every allegation.

5 62. Answering paragraph No. 62, Defendant denies it failed to diligently
6 investigate Plaintiff's notification of identity theft. Defendant lacks sufficient
7 information and belief on which to either admit or deny each and every other
8 allegation and on that basis denies each and every allegation.

9 63. Answering paragraph No. 63, Defendant denies it failed to diligently
10 investigate Plaintiff's notification of identity theft. Defendant lacks sufficient
11 information and belief on which to either admit or deny each and every other
12 allegation and on that basis denies each and every allegation.

13 64. Answering paragraph No. 64, Defendant denies that it has damaged
14 plaintiff in any manner whatsoever or that she is entitled to recover any damages
15 from defendant. Defendant lacks sufficient information and belief on which to admit
16 or deny the remaining allegations and on that basis denies each and every allegation.

17 65. Answering paragraph No. 65, Defendant lacks sufficient information
18 and belief on which to admit or deny the allegations contained therein and on that
19 basis denies each and every allegation.

20 66. Answering paragraph No. 66, Defendant denies that it lacks probable
21 cause to believe Plaintiff is liable for the account. As to the remaining allegations,
22 Defendant lacks sufficient information and belief to either admit or deny the
23 allegations and on that basis denies each allegation.

24 67. Answering paragraph No. 67, Defendant denies each and every
25 allegation as it pertains to Defendant. As to the remaining allegations, Defendant
26 lacks sufficient information and belief on which to either admit or deny the
27 allegations and on that basis denies every allegation.

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1 68. Answering paragraph No. 68, Defendant has insufficient information
2 and belief on which to admit or deny the allegations contained herein and on that
3 basis denies each and every allegation.

4 69. Answering paragraph No. 69, Defendant has insufficient information
5 and belief on which to admit or deny the allegations contained herein and on that
6 basis denies each and every allegation.

7 70. Answering paragraph No. 70, Defendant has insufficient information
8 and belief on which to admit or deny the allegations contained herein and on that
9 basis denies each and every allegation.

10 71. Answering paragraph No. 71, Defendant has insufficient information
11 and belief on which to admit or deny the allegations contained herein and on that
12 basis denies each and every allegation.

13 72. Answering paragraph No. 72, Defendant denies each and every
14 allegation as it pertains to Defendant. As to the remaining allegations, Defendant
15 lacks sufficient information and belief on which to admit or deny the allegations and
16 on that basis denies each and every allegation.

17 73. Answering paragraph No. 73, Defendant denies it has damaged Plaintiff
18 in any way whatsoever.

19 **FIRST AFFIRMATIVE DEFENSE**

20 1. As a separate, affirmative defense, Defendant alleges that the
21 Complaint, and each and every purported cause of action contained therein, fails to
22 state facts sufficient to constitute a cause of action.

23 **SECOND AFFIRMATIVE DEFENSE**

24 2. As a separate, affirmative defense, Defendant alleges that the alleged
25 actions of Defendant were proper and did not violate any provisions of 15 U.S.C.
26 §1692 et. seq.

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THIRD AFFIRMATIVE DEFENSE

3. As a separate, affirmative defense, Defendant alleges that at all times mentioned in the Complaint, Defendant acted lawfully and within its legal rights, with a good faith belief in the exercise of that right, and in the furtherance of a legitimate business purpose. Further, Defendant acted in good faith in the honest belief that the acts, conduct and communications, if any, of the Defendant were justified under the circumstances based on information reasonably available to this answering Defendant.

FOURTH AFFIRMATIVE DEFENSE

4. As a separate, affirmative defense, Defendant alleges that the alleged actions of the Defendant were not accompanied by actual malice, intent or ill will.

FIFTH AFFIRMATIVE DEFENSE

5. As a separate, affirmative defense, Defendant allege that Defendant's conduct, communications and actions, if any, were privileged.

SIXTH AFFIRMATIVE DEFENSE

6. As a separate, affirmative defense, assuming arguendo that this Defendant violated a statute alleged in the complaint, which presupposition the Defendant denies, such violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

SEVENTH AFFIRMATIVE DEFENSE

7. As a separate, affirmative defense, Defendant alleges that Plaintiff is barred from any recovery against this answering Defendant by the doctrine of laches.

EIGHTH AFFIRMATIVE DEFENSE

8. As a separate, affirmative defense, Defendants allege that its conduct, communications and actions, if any, were privileged pursuant to Civil Code §§1785.32 and 47.

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NINTH AFFIRMATIVE DEFENSE

9. As a separate, affirmative defense, Defendant alleges that they, at all times alleged in the complaint, maintained reasonable procedures created to prevent any type of intentional violations of the Fair Debt Collection Practices Act.

TENTH AFFIRMATIVE DEFENSE

10. As a separate, affirmative defense, Defendant alleges that if Plaintiff was damaged in any sum or sums alleged, which Defendant denies, then Plaintiff's damages are limited by 15 U.S.C. §1692(k)(a)(1), §1692(k)(a)(2)(A), §1692(k)(a)(3) and 15 U.S.C. § 1692(k)(b)(1).

ELEVENTH AFFIRMATIVE DEFENSE

11. As a separate, affirmative defense, Defendant alleges that Defendant's conduct, communications and actions, if any, were privileged pursuant to 15 U.S.C. §1692(k)(c).

TWELFTH AFFIRMATIVE DEFENSE

12. As a separate, affirmative defense, Defendant alleges that the alleged actions of Defendant were proper and did not violate any provisions of Cal. Civ. Code § 1788, *et seq.*

THIRTEENTH AFFIRMATIVE DEFENSE

13. As a separate, affirmative defense, Defendant alleges that the alleged actions of the Defendant was privileged pursuant to Federal and State Common Law.

FOURTEENTH AFFIRMATIVE DEFENSE

14. As a separate, affirmative defense, Defendant alleges that if Plaintiff was damaged in any sum or sums alleged, which Defendant denies, Plaintiff failed to mitigate her damages.

FIFTEENTH AFFIRMATIVE DEFENSE

15. As a separate, affirmative defense, Defendant alleges that if Plaintiff was damaged in any sum or sums alleged, which Defendant denies, Defendant's alleged acts or omissions were not a proximate cause of said damages.

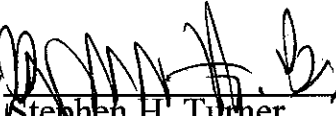
1 WHEREFORE, this answering Defendant prays,

2 1. For a judgment in favor of Defendant, and against Plaintiff, and that
3 Plaintiff take nothing by reason of said Complaint;

4 2. That this answering Defendant be awarded cost of suit herein and
5 such other further relief as the Court deems just.

6 DATED: January 10, 2008

STEPHEN H. TURNER
LEWIS BRISBOIS BISGAARD & SMITH LLP

7
8
9 By 
10 Stephen H. Turner
11 Attorneys for Defendants Patenaude & Felix,
12 APC
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LEWIS BRISBOIS BISGAARD & SMITH LLP
221 NORTH FIGUEROA STREET, SUITE 1200
LOS ANGELES, CALIFORNIA 90012-2601
TELEPHONE (213) 250-1800

1 CERTIFICATE OF SERVICE

2 I certify that on the 10th day of January, 2008, I electronically transmitted the
3 foregoing document to the Clerk's office using the CM/ECF System for filing and
4 transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

5 Andrew J. Ogilvie, Esq.
6 Attorney for Plaintiff Emelia M. Pasternak

7 Thomas P. Quinn, Esq.
8 Attorney for Defendant Equifax

9 Donald E. Bradley, Esq.
10 Attorney for Defendant Trans Union

11 David L. Wallach, Esq.
12 Attorney for Defendant Experian

13 Veronica Kuumdjian, Esq.
14 Attorney for Defendant Capital One Bank

15 By: /s/ Stephen H. Turner
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Attorneys for Defendant Patenaude & Felix, APC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EMELIA M. PASTERNAK,
Plaintiff,

v.

TRANS UNION, LLC, EXPERIAN
INFORMATION SOLUTIONS, INC.,
EQUIFAX INFORMATION
SERVICES, LLC, CAPITAL ONE
BANK, a national association, and
PATENAUDE & FELIX, APC, a law
firm,

Defendants.

CASE NO. 3:07-cv-04980 MJJ

The Hon. Martin J. Jenkins

**CERTIFICATE OF INTERESTED
PARTIES**

ACTION FILED: September 26,
2007
TRIAL DATE: N/A

The undersigned, counsel of record for Defendant Patenaude & Felix, APC
certifies that the following listed parties have a direct, pecuniary interest in the
outcome of this case. These representations are made to enable the Court to evaluate
possible disqualification or recusal.


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1	EMELIA M. PASTERNAK	Plaintiff
2	TRANS UNION, LLC	Defendant
3	EXPERIAN INFORMATION	Defendant
4	SOLUTIONS, INC	
5	EQUIFAX INFORMATION	Defendant
6	SERVICES, LLC	
7	CAPITAL ONE BANK	Defendant
8	PATENAUDE & FELIX, APC	Defendant

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11
12 DATED: January 8, 2008

STEPHEN H. TURNER
LEWIS BRISBOIS BISGAARD & SMITH LLP

13
14
15 By 
16 Stephen H. Turner
17 Attorneys for Defendant Patenaude & Felix,
18 APC
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TELEPHONE (213) 250-1800

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2 I certify that on the 10th day of January, 2008, I electronically transmitted the
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9 Donald E. Bradley, Esq.
10 Attorney for Defendant Trans Union

11 David L. Wallach, Esq.
12 Attorney for Defendant Experian

13 Veronica Kuiuindjian, Esq.
14 Attorney for Defendant Capital One Bank

15 By: /s/ Stephen H. Turner
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